THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 14180 OF 1995

Date: 17.03.2006

Between:

Ramesh Sales Corporation, Rep.,by Sri Ramesh Kumar, S/o Gulab Rai, aged about 52 years, Occ: Managing Partner, R/o Secunderabad.

… Petitioner

and

1. The Addl.Industrial Tribunal-cum-Labour Court, Hyderabad, Chandra Vihar Buildings, 1st Floor, M.J. Road, Hyderabad and another.

…. Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 14180 OF 1995

ORDER:

Aggrieved by the award of the Additional Industrial Tribunal-cum-Labour Court, Hyderabad in I.D.No. 396 of 1993 (Old I.D.No. 55 of 1992) dated 22.02.1995, the employer is before this Court.

2. Facts, as noted by the Tribunal in its award, are that the 2nd respondent-workman joined the service of the petitioner as a technician in 1983 and his last drawn pay was Rs. 1450/- per month. In his petition before the Tribunal, the workman alleged that there were 25 to 30 employees in the employer establishment, that the management made employees work 11 to 12 hours a

day without rest, medical insurance, weekly offs or bonus etc. and on coming to know about the law relating to service conditions, the employees had requested the management on 02.11.1991 to extend them benefits under the A.P. Shops and Establishments Act and while there was a discussion between the employees and the employer, the meeting ended with challenges and counter-challenges and when the respondent-workman and two other employees reported for duty on 03.11.1991, they were not permitted to perform their duty. The management insisted that they withdraw the demands raised on the previous day and when the workmen refused to do so, they were not permitted to join duty. According to the workman, he and two others were also not paid wages for the month of October 1991 though other employees were paid wages on 07.11.1991. The petitioner-employer sent a notice on 16.11.1991 informing the 2nd respondent workman that he had abstained from duty from 03.11.1991. According to the 2nd respondent-workman, he requested the employer to settle the issues and since the issues were not settled the workman was not permitted to work in the establishment till the end of 1991. The second respondent-workman gave a reply notice on 04.01.1992 setting out a case of wrongful termination. The petitioner employer sent a rejoinder thereto on 01.02.1992 reiterating its stand.

3. The petitioner employer, in its counter-affidavit before the Tribunal, contended that the workman had abandoned his job on his own accord, that he remained absent from duty without any leave or permission from 04.11.1991, that when the employer gave a notice on 16.11.1991, the workman did not report for duty but sent a reply on 04.01.1992, to which a rejoinder was sent by the employer on 01.02.1992, that the workman had not come to Court with clean hands, that he intended only to harass the petitioner and that the workman and two others had started their own business and had become competitors to the petitioner employer's business. The employer also denied that they had employed 25 to 30 employees and were making them work for 10 to 12 hours. The employer stated that they had only 5 or 6 employees who were working eight hours a day. The employer also denied that the workmen were made to work overtime or on Sundays and contended that the workman himself had not come to collect his wages, that there was no meeting between the employer and the workman on 02.11.1991 or 05.12.1991 and that the workman

and two of his colleagues had started their business in the name and style of 'Hyderabad Times', had abandoned the job and had filed a false case.

4. The workman examined himself as W.W-1 and filed Exs.W-1 to W-3. The partner of the employer was examined as M.W-1 and exhibits Exs.M-1 to M-5 were marked on his behalf. The only documents marked on behalf of the workman are the legal notice dated 16.11.1991sent to him by his employer, his reply thereto on 04.01.1992, and the rejoinder sent to him by his employer on 01.02.1992. The petitioner herein marked five documents, which included the receipt given by the petitioner on a piece of paper, counter-foil of a cheque and a copy of the letter sent by the workman to Anglo Swiss Company, Calcutta.

5. Insofar as the petitioner's allegation that the 2nd respondent-workman had started his own business, under the name and style of 'Hyderabad Times' is concerned, the labour Court, on appreciation of the evidence on record, came to the conclusion that the evidence was not sufficient to draw a presumption that the workman was working in 'Hyderabad Times' and since the finding of the labour Court in this regard is based on evidence, this Court in *certiorari* proceedings would not sit in appeal and re-appreciate the evidence on record.

6. The other circumstance relied on by the employer (petitioner) herein in proof of its contention that the 2nd respondent had abandoned his job, is the notice issued by it on 16.11.1991 calling upon the 2nd respondent workman to join duty and informing him that he had abandoned his job on 03.11.1991. Admittedly, the said notice was received by the 2nd respondent on 25.11.1991. Instead of accepting the call of the petitioner herein to join duty, the 2nd respondent workman sent a reply thereto on 04.01.1992 alleging that he had not been paid minimum wages, overtime wages, bonus, provident fund etc. The labour Court taking note of the legal notice sent by the petitioner herein on 16.11.1991 and the reply given thereto by the 2nd respondent workman on 04.01.1992 held as under:

"Another circumstance relied upon by the respondent in proof of its contention that the petitioner abandoned the job is Ex.W-1 notice issued by the respondent to the petitioner informing him about his abandonment of job on 03.11.1991, starting a business byname 'Hyderabad Times' and demanding the petitioner to resume duty. No doubt the respondent took the first step and claimed that the petitioner abandoned the job. The petitioner gave Ex.W-2 reply setting out his case of dismissal consequent upon himself demanding

minimum wages, over time wages, bonus, provident fund etc., we have to see the inequality of position between the petitioner and the respondent. The petitioner is a semi-literate mechanic belonging to an underorganised sector. He does not know his rights and he can only go around the shop or establishment of the respondent pleading for reinstatement. The reason set-out by the respondent that the petitioner abandoned the job remained unproved. The petitioner, absolutely, has no reason to abandon the job."

7. The finding of the Tribunal that the petitioner is a semi-literate mechanic belonging to an un-organised sector, that he does not know his rights and that he can only go around the shop or establishment of the respondent pleading for reinstatement, are not based on the evidence on record and are mere surmises and conjectures. The question which the labour Court was required to inquire into was whether the 2nd respondent had, in fact, abandoned his job and not the reasons therefor. While holding that the workman had absolutely no reason to abandon his job, the Tribunal ignored the fact that despite the petitioner herein asking the 2nd respondent workman to join duty in his legal notice dated 16.11.1991, the 2nd respondent-workman did not choose to do so. Ignoring the relevant and material evidence on record, the Tribunal goes on hold that since the petitioner-employer did not deny the allegation that he had not been paid bonus and had also not deducted PF contribution of the workman or remit the same to the concerned authority along with its contribution, the employer was trying to escape from his obligation under several labour legislations. Though it is well settled that the onus is on the workman, the labour Court fastened the onus on the employer to have produced the attendance register, in support of its contention that the number of employees employed by it were only 5 to 6, as against the 2nd respondent's contention that there were 25 to 30 employees, and came to the conclusion that the employer intentionally evaded to file the attendance register. The labour Court thereafter concludes that the employer had no intention to take back the workman and that this could be inferred from the legal notice dated 16.11.1991 that they had lost confidence in the workman. The labour Court concludes that the legal notices were given by the employer, after taking legal advice, to pre-empt the legal action by the workman. Accepting the version of the workman, the labour Court holds that the petitioner employer had terminated the services of the workman as they demanded the benefits flowing out of labour legislations. The labour Court then holds that in view of the strained relationship between the parties and lapse of time, it is not

desirable to order reinstatement and that it would be sufficient if the respondents were directed to pay wages for the month of October 1991, and compensation of Rs.5,000/- towards reinstatement and other reliefs. Taking into account the last drawn salary of the workman of Rs.1450/- and that he had claimed to have put in nine years of service, the labour Court granted 4 ½ months wages of Rs.6,525/- as service compensation and an award was passed directing the petitioner to pay Rs.12,975/- to the workman.

8. The application filed by the workman was under Section 2-A(2) of the Industrial Disputes Act. Unlike a reference under Section 10 of the Act, the jurisdiction, which the Tribunal derives under Section 2-A(2), is only in the case of a dispute arising out of discharge, dismissal, retrenchment or termination of an employee by his employer. The only question which could therefore have been adjudicating by the Tribunal, in proceedings under Section 2-A(2) of the Industrial Disputes Act, is as to whether the workman had voluntarily abandoned his job or whether his services were terminated. The question as to whether the employer was liable to pay provident fund and Bonus, whether there were only 5 to 6 workmen employed as against the 2nd respondent workman's contention that 25 to 30 employees were employed, are all matters beyond its jurisdiction, in proceedings under Section 2-A(2) of the Industrial Disputes Act.

9. The legal notice in Ex.W-1 dated 16.11.1991, while informing the workman that he had voluntarily abandoned his job from 03.11.1991 and that the employer had lost confidence, called upon him to join duty. Whatever may be the confidence, the employer may or may not have in the workman, the fact remains that the workman was called upon to join duty. Nothing prevented the workman from joining duty, on receipt of the legal notice on 25.11.1991, and pursuing his remedies in the appropriate forum for payment of provident fund, bonus etc., if indeed these amounts were due to him, for these issues, as stated above, are beyond the jurisdiction of the Tribunal. The labour Court could not therefore have made these as the basis for holding that the workman was not permitted to join duty. The finding that the workman did not know his rights, that he had to go around the shop for reinstatement are findings not based on

evidence but on mere assumptions and presumptions. There is no legal evidence on record for the labour Court to have arrived at such a finding. The finding of the labour Court that the legal notice issued by the petitioner herein on 16.11.1991 was only to preempt any legal action which the workman may take, is also based on no evidence and is a perverse finding. So also the finding that the petitioner employer herein had no intention to permit the workman to join duty, since he had stated that he had lost confidence in the workman. The fact remains that despite having stated that it had lost confidence, the petitioner employer had still called upon the 2nd respondent to join duty. Nothing prevented the 2nd respondent workman, from joining duty. The evidence on record would clearly show that atleast from 25.11.1991, the date on which the workman had received a legal notice from his employer asking him to join duty, by not reporting for duty thereafter, the workman, had indeed abandoned his job.

10. Sri Ch. Ramesh Babu, learned Counsel for the 2nd respondent workman, would vehemently contend that this Court, in proceedings under Article 226 of the Constitution of India, would not sit in appeal over the findings of the Tribunal and since the Tribunal had come to the conclusion that the workman's services were terminated and instead of reinstatement had awarded compensation, no interference was called for.

11. While it is true that the *certiorari* jurisdiction of this Court, under Article 226 of the Constitution of India, is supervisory and not appellate and that this Court would not re-appreciate the evidence on record or sit in appeal over the findings of the Tribunal, where the findings of the Tribunal/labour Court are based on no evidence or are perverse, interference of this Court, in its *certiorari* jurisdiction under Article 226 of the Constitution of India, is justified.

12. Insofar as salary for the month of October 1991 is concerned, while the workman pleads that he was not paid salary from the month of October 1991, it is the case of the employer that the workman had not collected the salary. While the jurisdiction of the Tribunal to examine this question is also doubtful, I see no reason to exercise the discretionary jurisdiction of this Court, under Article 226 of the Constitution of India, and to interfere with the award of the labour Court insofar as wages for the month of October 1991 was awarded to

the workman, since liability to pay this amount is not denied by the employer.

13. While confirming the award of the labour Court in so far as payment of wages for the month of October, 1991 is concerned, the remaining portion of the award relating to payment of compensation of Rs.5,000/- and service compensation of Rs.6,525/- are set aside. Since the legal notice dated 16.11.1991 was received by the 2nd respondent workman on 25.11.1991, while the 2nd respondent would not be entitled for payment of any amount thereafter, he would be entitle for wages for the period prior to 25.11.1991. The second respondent is not entitled for compensation of Rs.5,000/- representing the amount awarded by the labour Court, in lieu of reinstatement, as the finding of the labour Court that the services of the workman had been terminated is based on no legal evidence on record. In so far as payment of service compensation is concerned, these are matters which could not have been examined by the Tribunal in proceedings under Section 2-A(2) of the Act and are therefore set aside, leaving it open to the 2nd respondent, if he so chooses, to agitate it in appropriate proceedings. The 2nd respondent workman would, under the award of the Tribunal, in I.D.No. 396 of 1993, be entitled to be paid salary for the month of October 1991 and salary for the period upto 25.11.1991, and not thereafter.

14. The writ petition is allowed in part. There shall however be no order as to costs.

Date: 17.03.2006 _____

RAMESH RANGANATHAN, J

MRKR